equity in assuming jurisdiction. In such case, while the bill has only one number upon the docket, and calls itself a single proceeding, it is in reality a bundle of separate suits, each of which is no doubt similar in character to each of the others, but rests nevertheless upon the distinct liability of one defendant."

The *Tribbette* case rightly held that an injunction could not be granted, because in that case, even had an injunction been granted, nothing would have been gained by the court of equity in assuming jurisdiction. But is it impossible to suppose that a case might arise where, even without a community of interest in the subject matter of the litigation, there could be such a community of interest in the fact and law involved, that equity could take jurisdiction without being confronted with a situation where there still remained several issues to be tried between the several parties? We think not. Clearly if such a case should arise, something *would* be gained by the court of equity in assuming jurisdiction.

The most reasonable view in this whole question, seems to be that expressed by the editor in the sections mentioned above as added to POMEROY, EQUITY JURISPRUDENCE. The same view, in a little more detail, is to be found in the dissenting opinion of MARSHALL, J., in the case of *Illinois Steel Co.* v. *Schroeder,* 133 Wis. 561, 113 N. W. 51, where he says: "No common title as to one entire thing or community of rights in such thing, each party being interested in the one particular thing, title or right to be settled by litigation, is absolutely essential to an action to prevent a multiplicity of suits. It is sufficient if there are sufficient common points as to title, rights or questions of law or fact, to warrant the court in the particular situation in opening its doors." In other words, each case is to be decided on its own merits, and the question as to whether, to use the words of POMEROY, anything will be gained by a court of equity in assuming jurisdiction, or not, is to be left to the discretion of the judge. The United States Supreme Court lays down the same rule in *Hale* v. *Allison,* 188 U. S. 56. See also in this connection, the opinion of PITNEY, V. C., in *Inhabitants of Cranford* v. *Watters,* 61 N. J. Eq. 284. S. E. G.

THE EFFECT GIVEN TO FOREIGN JUDGMENTS NOT BASED ON PERSONAL SERVICE.—The well established rule that the courts of one jurisdiction will not enforce judgments obtained against its own citizens in foreign jurisdictions, in the absence of personal service, apparently received an important qualification in the recent case of *Phillips* v. *Batho,* [1913] 3 K. B. 25. In that case the defendant, an English subject, was named as co-respondent in divorce proceedings instituted in India, was served with process by registered post in England, and a judgment for damages was rendered against him ancillary to the decree for divorce, in accordance with a statute permitting the same. In a suit on the judgment in England a recovery was permitted.

In *Emanuel* v. *Symon* [1903] 1 K. B. 302, BUCKLEY, L. J., quoting from *Rousillon* v. *Rousillon,* 49 L. J. Ch. 338, enumerates five cases in which the courts of England will give effect to foreign judgments in personam, "(1) where the defendant is a subject of the foreign country in which the judg-

ment has been obtained, (2) where he was a resident in the foreign country when the action began, (3) where the defendant in the character of plaintiff has selected the forum in which he is afterwards sued, (4) where he has voluntarily appeared, and (5) where he has contracted to submit himself to the forum in which the judgment was obtained."

To the above enumeration the court, in *Phillips* v. *Batho,* supra, proceeds to add a sixth category. SCRUTTON, J., says in the course of the opinion. "It is not necessary for the purposes of this case to do more than say that the new class at least included judgments in personam ancillary or accessory to the dissolution of a marriage of persons domiciled * * * within the jurisdiction of the court pronouncing the decree, where both the court pronouncing the judgment and the court enforcing it are courts of the same sovereign, and where the court enforcing it cannot itself grant the relief because it has not jurisdiction over the marriage to whose dissolution the proceedings are ancillary, though it can grant similar ancillary relief in the case of dissolution of marriages which are assigned to its jurisdiction by the Sovereign." It will be perceived that this class is based upon the concurrence of two conditions, namely: (1) a judgment in personam ancillary to a judgment in rem, and (2) the fact that both courts owe allegiance to the same sovereign.

Judgments in rem bind the whole world. *Castrique* v. *Imrie,* 39 L. J. C. P. 350, L. R. 4 H. L. 414; *The Belgenland,* 114 U. S. 355. A decree for the dissolution of marriage, being a judgment affecting the status of the parties, stands on the same footing as a judgment in rem, and is binding even in the absence of personal service. *Bater* v. *Bater,* [1906] L. R. P. 209; *Harvey* v. *Farnie,* L. R. 8 A. C. 43, 5 P. Div. 153; *Atherton* v. *Atherton,* 181 U. S. 155, 45 L. Ed. 794, 21 Sup. Ct. 544; *Maynard* v. *Hill,* 125 U. S. 190, 31 L. Ed. 654, 8 Sup. Ct. 723; though in this country some confusion has been introduced by the case of *Haddock* v. *Haddock,* 201 U. S. 562, 50 L. Ed. 867, 26 Sup. Ct. 525; See 11 MICH. L. REV. 568. Where, however, in proceedings for the dissolution of marriage the decree goes farther than divorce, such extension is in its nature a judgment in personam. *Rigney* v. *Rigney,* 127 N. Y. 408, 28 N. E. 405, 24 Am. St. Rep. 462 (where the decree was for alimony): *Garner* v. *Garner,* 56 Md. 127 (where the defendant was prohibited from marrying again). So much of the decree therefore, in *Phllips* v. *Batho,* supra, as gives damages against the co-respondent, would appear on authority to be in personam—the efficacy of which, in the forum, is to be controlled by the considerations governing other foreign judgments in personam.

In *Pemberton* v. *Hughes,* 68 L. J. Ch. (N. S.) 281, 1 Ch. 781, the principles on which the English courts act in regarding or disregarding foreign judgments are thus stated. "Where no substantial justice, according to English notions, is offended, all that the English courts look to are the finality of the judgment and the jurisdiction of the court, in this sense and to this extent —namely, its competence to entertain the sort of case it did deal with and its competence to require the defendant to appear before it. * * * But the jurisdiction which alone is important in these matters is the competence of the court in an *international* sense—that is, its territorial competence over the subject-matter and over the defendant. Its competence or jurisdiction in any

other sense is not regarded as material by the courts of this country." Thus English courts will not investigate the propriety of proceedings in foreign courts, unless they offend against English views of justice, and the paradox may arise of a judgment void under the municipal law where rendered—e. g., where the court had no jurisdiction according to its own rules—yet upheld in an action in England. *Dakota Lumber Co.* v. *Renderknecht*, 2 Western Law Reporter (Canada) 275. And see, 24 LAW QUART. REV. 412.

The English views of substantial justice thus become of paramount importance. The old common law doctrine that the King's writ did not run beyond the sea has received important modifications through Rules of Court promulgated under statutory authority. These rules make distinct provision for service outside of the jurisdiction in certain classes of actions in personam, and under these Rules the English courts hold themselves bound to pronounce judgment against parties served with summons or notice abroad, even though they are non-residents and are not British subjects. *Robey* v. *The Snaefell Mining Co., Ltd.*, 20 L. R. Q. B. D. 152. See PIGGOTT, PARTIES OUT OF THE JURISDICTION, (2nd Ed.) 215. It appears, moreover, that default judgments rendered on such service are given full credit in the British colonies, though the courts of England themselves recognize the doubtful effect of such judgments in foreign jurisdictions. See opinion of Lord ESHER, M. R., in *Western National Bank* v. *Perez* (1891) 1 Q. B. at page 313. Also *Rayment* v. *Rayment* [1910] 1 P. 271. In *Sirdar Gurdyal Singh* v. *Rajah of Faridkote* [1894] A. C. 670, the English courts refused to give effect to the judgment of the court of a native state of India, rendered on service *ex* juris against a non-resident foreigner, though that method of service was in conformity to a local provision similar to the Rules of Court. And foreign judgments rendered against Englishmen, on like service, are not regarded as binding in England. *Turnbull* v. *Walker* (1892) 67 L. T. 767.

Nor does the fact that the courts and parties owe allegiance to the same sovereign militate against the application of the rule denying credit to foreign judgments rendered against non-resident British subjects in the absence of personal service. In suits on their judgments the component parts of the British Empire are regarded as distinct foreign jurisdictions. *Emanuel* v. *Symon*, supra. Thus in *Gibson & Co.* v. *Gibson* [1913] 3 K. B. 302, where suit was brought in England on a default judgment in personam rendered in Victoria against the defendant, a British subject, resident in England and served without the jurisdiction, it was held that the Victorian court thereby acquired no jurisdiction so as to render the judgment recovered against the defendant, in his absence, binding upon him in England. In the decision of this case great stress was laid upon the fact that the defendant was a British subject, and therefore not a subject of Victoria nor bound by its laws to service. But if the reasoning of *Phillips* v. *Batho* were to apply, this fact—that the parties and the courts are the subjects of the same sovereign—would bind the defendant as to the Victorian laws of service, and would permit suit in England on the colonial judgment. In this respect the cases are inconsistent.

The conclusion must be that a personal decree pronounced in *absentiam* and on service *ex juris* against non-resident foreigners is offensive, in its *international* aspect, to the English view of substantial justice. It is difficult, therefore, to justify *Phillips* v. *Batho*. In the several grounds for its decision it is opposed to authority. To permit this sixth case to be added to those enumerated in *Rousillon* v. *Rousillon,* is to create a rule predicated on doctrines severally repudiated and which collectively do not, in reason, justify the principle advanced The possibilities in its application, too, would seem to enjoin on British subjects an onerous attention to the proceedings of the many courts of the Empire, and to augur rather for impeding than promoting justice.

But however doubtful the doctrine of *Phillips* v. *Batho* may be in England it is clear that it can have no application in this country. Though the "full faith and credit" clause of the Constitution would seem to enjoin on the courts of one state a stricter regard for the judgments of the courts of sister states, it is held not to forbid an investigation into the jurisdiction of the foreign tribunal. *D'Arcy* v. *Ketchum,* 11 How. (U. S.) 165. It is not only essential that the court rendering the judgment have jurisdiction over the parties and the subject matter—which is the English view—but it must appear that there has been personal service *within* the State. Nor is it material that the manner of service was that authorized by the State statute, or that the defendant was a subject of the state. "Process from the tribunals of one state cannot run into another state, and summon parties there domiciled to leave its territory and respond to proceedings against them. Publication of process or notice within the state where the tribunal sits cannot create any greater obligation upon the non-resident to appear. Process sent to him out of the state, and process published within it, are equally unavailing in proceedings to establish his personal liability." *Pennoyer* v. *Neff,* 95 U. S. 714, 24 L. Ed. 565; *Webster* v. *Reid,* 11 How. (U. S.) 437; *De La Montanya* v. *De La Montanya,* 112 Cal. 101, 44 Pac. 345, 53 Am. St. Rep. 165; *Behrens* v. *Brice,* 52 Texas Civil App. 221, 113 S. W. 782; *Bank of Horton* v. *Knox,* 133 Iowa 443, 109 N. W. 201. These views find substantial confirmation in *Ward* v. *Boyce,* 152 N. Y. 191, 46 N. E. 180, where a judgment rendered in Vermont without personal service within the jurisdiction, was pleaded in bar in a suit in New York. The court said, "If the proceeding involves the determination of the personal liability of the defendant, he must be brought within the jurisdiction by service of process *within* the state or voluntary appearance. The proceedings in Vermont were substantially in accordance with the statutes of that state. It is not enough, however, to show that the judgment was authorized by statute. In order to entitle it to full faith and credit in another jurisdiction, it must appear that the statute contemplated a judicial proceeding in conformity with the provision above stated." It follows, therefore that the courts of this country refuse to allow any validity to the default judgments of a foreign jurisdiction founded on service *ex juris,* even though the defendant be a citizen of such foreign state. *Shepard* v. *Wright,* 59 How. Pr. (N. Y.) 512. The doctrine of *Phillips* v. *Batho* could have no standing in this country. C. B. H.